



Sen. John J. Cullerton

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09700HB5342sam001

LRB097 20175 HLH 70338 a

1 AMENDMENT TO HOUSE BILL 5342

2 AMENDMENT NO. _____. Amend House Bill 5342 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Illinois Income Tax Act is amended by
5 changing Sections 901 and 1501 and by adding Section 223 as
6 follows:

7 (35 ILCS 5/223 new)

8 Sec. 223. Credit for qualified education expenses.

9 (a) For taxable years ending on or after December 31, 2012,
10 and ending prior to December 31, 2017, each qualifying
11 individual taxpayer is entitled to a credit against the tax
12 imposed by subsections (a) and (b) of Section 201 in an amount
13 equal to 2.5% of the qualified education expenses paid by the
14 taxpayer to an eligible educational institution during the
15 taxable year on behalf of a qualified student, but not to
16 exceed \$250 per qualifying individual taxpayer who files as

1 married filing jointly, or \$125 per taxpayer who files as an
2 individual, married filing separately, widow, or head of
3 household, in any taxable year.

4 (b) The credit may not be carried back. If the amount of
5 the credit exceeds the tax liability for the year, the excess
6 may be carried forward and applied to the tax liability of the
7 5 taxable years following the excess credit year. The tax
8 credit shall be applied to the earliest year for which there is
9 a tax liability. If there are credits for more than one year
10 that are available to offset a liability, the earlier credit
11 shall be applied first.

12 (c) For the purposes of this Section:

13 "Eligible educational institution" means any public or
14 private university, community college, vocational school, or
15 other postsecondary educational institution that is physically
16 located in the State and is eligible to participate in a
17 student loan program administered by the United States
18 Department of Education.

19 "Qualified education expenses" means tuition and fees
20 required for enrollment or attendance at an eligible
21 educational institution, as well as expenses for
22 course-related books, supplies, and equipment if those
23 expenses are incurred as part of the student's course of study.

24 "Qualifying individual" means an individual taxpayer who
25 either (i) files as an individual, married filing separately,
26 widow, or head of household, with a federal adjusted gross

1 income of \$75,000 or less; or (ii) files married filing jointly
2 with a federal adjusted gross income that is \$150,000 or less.

3 "Qualified student" means a person:

4 (1) who is a resident of this State and a citizen or
5 permanent resident of the United States; and

6 (2) who enrolls or is enrolled in an eligible
7 educational institution as an undergraduate student and
8 has not received a baccalaureate degree.

9 (35 ILCS 5/901) (from Ch. 120, par. 9-901)

10 Sec. 901. Collection Authority.

11 (a) In general.

12 The Department shall collect the taxes imposed by this Act.
13 The Department shall collect certified past due child support
14 amounts under Section 2505-650 of the Department of Revenue Law
15 (20 ILCS 2505/2505-650). Except as provided in subsections (c),
16 (e), (f), and (g) of this Section, money collected pursuant to
17 subsections (a) and (b) of Section 201 of this Act shall be
18 paid into the General Revenue Fund in the State treasury; money
19 collected pursuant to subsections (c) and (d) of Section 201 of
20 this Act shall be paid into the Personal Property Tax
21 Replacement Fund, a special fund in the State Treasury; and
22 money collected under Section 2505-650 of the Department of
23 Revenue Law (20 ILCS 2505/2505-650) shall be paid into the
24 Child Support Enforcement Trust Fund, a special fund outside
25 the State Treasury, or to the State Disbursement Unit

1 established under Section 10-26 of the Illinois Public Aid
2 Code, as directed by the Department of Healthcare and Family
3 Services.

4 (b) Local Government Distributive Fund.

5 Beginning August 1, 1969, and continuing through June 30,
6 1994, the Treasurer shall transfer each month from the General
7 Revenue Fund to a special fund in the State treasury, to be
8 known as the "Local Government Distributive Fund", an amount
9 equal to 1/12 of the net revenue realized from the tax imposed
10 by subsections (a) and (b) of Section 201 of this Act during
11 the preceding month. Beginning July 1, 1994, and continuing
12 through June 30, 1995, the Treasurer shall transfer each month
13 from the General Revenue Fund to the Local Government
14 Distributive Fund an amount equal to 1/11 of the net revenue
15 realized from the tax imposed by subsections (a) and (b) of
16 Section 201 of this Act during the preceding month. Beginning
17 July 1, 1995 and continuing through January 31, 2011, the
18 Treasurer shall transfer each month from the General Revenue
19 Fund to the Local Government Distributive Fund an amount equal
20 to the net of (i) 1/10 of the net revenue realized from the tax
21 imposed by subsections (a) and (b) of Section 201 of the
22 Illinois Income Tax Act during the preceding month (ii) minus,
23 beginning July 1, 2003 and ending June 30, 2004, \$6,666,666,
24 and beginning July 1, 2004, zero. Beginning February 1, 2011,
25 and continuing through January 31, 2015, the Treasurer shall
26 transfer each month from the General Revenue Fund to the Local

1 Government Distributive Fund an amount equal to the sum of (i)
2 6% (10% of the ratio of the 3% individual income tax rate prior
3 to 2011 to the 5% individual income tax rate after 2010) of the
4 net revenue realized from the tax imposed by subsections (a)
5 and (b) of Section 201 of this Act upon individuals, trusts,
6 and estates during the preceding month and (ii) 6.86% (10% of
7 the ratio of the 4.8% corporate income tax rate prior to 2011
8 to the 7% corporate income tax rate after 2010) of the net
9 revenue realized from the tax imposed by subsections (a) and
10 (b) of Section 201 of this Act upon corporations during the
11 preceding month. Beginning February 1, 2015 and continuing
12 through January 31, 2025, the Treasurer shall transfer each
13 month from the General Revenue Fund to the Local Government
14 Distributive Fund an amount equal to the sum of (i) 8% (10% of
15 the ratio of the 3% individual income tax rate prior to 2011 to
16 the 3.75% individual income tax rate after 2014) of the net
17 revenue realized from the tax imposed by subsections (a) and
18 (b) of Section 201 of this Act upon individuals, trusts, and
19 estates during the preceding month and (ii) 9.14% (10% of the
20 ratio of the 4.8% corporate income tax rate prior to 2011 to
21 the 5.25% corporate income tax rate after 2014) of the net
22 revenue realized from the tax imposed by subsections (a) and
23 (b) of Section 201 of this Act upon corporations during the
24 preceding month. Beginning February 1, 2025, the Treasurer
25 shall transfer each month from the General Revenue Fund to the
26 Local Government Distributive Fund an amount equal to the sum

1 of (i) 9.23% (10% of the ratio of the 3% individual income tax
2 rate prior to 2011 to the 3.25% individual income tax rate
3 after 2024) of the net revenue realized from the tax imposed by
4 subsections (a) and (b) of Section 201 of this Act upon
5 individuals, trusts, and estates during the preceding month and
6 (ii) 10% of the net revenue realized from the tax imposed by
7 subsections (a) and (b) of Section 201 of this Act upon
8 corporations during the preceding month. Net revenue realized
9 for a month shall be defined as the revenue from the tax
10 imposed by subsections (a) and (b) of Section 201 of this Act
11 which is deposited in the General Revenue Fund, the Education
12 Assistance Fund, the Income Tax Surcharge Local Government
13 Distributive Fund, the Fund for the Advancement of Education,
14 and the Commitment to Human Services Fund during the month
15 minus the amount paid out of the General Revenue Fund in State
16 warrants during that same month as refunds to taxpayers for
17 overpayment of liability under the tax imposed by subsections
18 (a) and (b) of Section 201 of this Act.

19 (c) Deposits Into Income Tax Refund Fund.

20 (1) Beginning on January 1, 1989 and thereafter, the
21 Department shall deposit a percentage of the amounts
22 collected pursuant to subsections (a) and (b)(1), (2), and
23 (3), of Section 201 of this Act into a fund in the State
24 treasury known as the Income Tax Refund Fund. The
25 Department shall deposit 6% of such amounts during the
26 period beginning January 1, 1989 and ending on June 30,

1 1989. Beginning with State fiscal year 1990 and for each
2 fiscal year thereafter, the percentage deposited into the
3 Income Tax Refund Fund during a fiscal year shall be the
4 Annual Percentage. For fiscal years 1999 through 2001, the
5 Annual Percentage shall be 7.1%. For fiscal year 2003, the
6 Annual Percentage shall be 8%. For fiscal year 2004, the
7 Annual Percentage shall be 11.7%. Upon the effective date
8 of this amendatory Act of the 93rd General Assembly, the
9 Annual Percentage shall be 10% for fiscal year 2005. For
10 fiscal year 2006, the Annual Percentage shall be 9.75%. For
11 fiscal year 2007, the Annual Percentage shall be 9.75%. For
12 fiscal year 2008, the Annual Percentage shall be 7.75%. For
13 fiscal year 2009, the Annual Percentage shall be 9.75%. For
14 fiscal year 2010, the Annual Percentage shall be 9.75%. For
15 fiscal year 2011, the Annual Percentage shall be 8.75%. For
16 fiscal year 2012, the Annual Percentage shall be 8.75%. For
17 all other fiscal years, the Annual Percentage shall be
18 calculated as a fraction, the numerator of which shall be
19 the amount of refunds approved for payment by the
20 Department during the preceding fiscal year as a result of
21 overpayment of tax liability under subsections (a) and
22 (b) (1), (2), and (3) of Section 201 of this Act plus the
23 amount of such refunds remaining approved but unpaid at the
24 end of the preceding fiscal year, minus the amounts
25 transferred into the Income Tax Refund Fund from the
26 Tobacco Settlement Recovery Fund, and the denominator of

1 which shall be the amounts which will be collected pursuant
2 to subsections (a) and (b) (1), (2), and (3) of Section 201
3 of this Act during the preceding fiscal year; except that
4 in State fiscal year 2002, the Annual Percentage shall in
5 no event exceed 7.6%. The Director of Revenue shall certify
6 the Annual Percentage to the Comptroller on the last
7 business day of the fiscal year immediately preceding the
8 fiscal year for which it is to be effective.

9 (2) Beginning on January 1, 1989 and thereafter, the
10 Department shall deposit a percentage of the amounts
11 collected pursuant to subsections (a) and (b) (6), (7), and
12 (8), (c) and (d) of Section 201 of this Act into a fund in
13 the State treasury known as the Income Tax Refund Fund. The
14 Department shall deposit 18% of such amounts during the
15 period beginning January 1, 1989 and ending on June 30,
16 1989. Beginning with State fiscal year 1990 and for each
17 fiscal year thereafter, the percentage deposited into the
18 Income Tax Refund Fund during a fiscal year shall be the
19 Annual Percentage. For fiscal years 1999, 2000, and 2001,
20 the Annual Percentage shall be 19%. For fiscal year 2003,
21 the Annual Percentage shall be 27%. For fiscal year 2004,
22 the Annual Percentage shall be 32%. Upon the effective date
23 of this amendatory Act of the 93rd General Assembly, the
24 Annual Percentage shall be 24% for fiscal year 2005. For
25 fiscal year 2006, the Annual Percentage shall be 20%. For
26 fiscal year 2007, the Annual Percentage shall be 17.5%. For

1 fiscal year 2008, the Annual Percentage shall be 15.5%. For
2 fiscal year 2009, the Annual Percentage shall be 17.5%. For
3 fiscal year 2010, the Annual Percentage shall be 17.5%. For
4 fiscal year 2011, the Annual Percentage shall be 17.5%. For
5 fiscal year 2012, the Annual Percentage shall be 17.5%. For
6 all other fiscal years, the Annual Percentage shall be
7 calculated as a fraction, the numerator of which shall be
8 the amount of refunds approved for payment by the
9 Department during the preceding fiscal year as a result of
10 overpayment of tax liability under subsections (a) and
11 (b) (6), (7), and (8), (c) and (d) of Section 201 of this
12 Act plus the amount of such refunds remaining approved but
13 unpaid at the end of the preceding fiscal year, and the
14 denominator of which shall be the amounts which will be
15 collected pursuant to subsections (a) and (b) (6), (7), and
16 (8), (c) and (d) of Section 201 of this Act during the
17 preceding fiscal year; except that in State fiscal year
18 2002, the Annual Percentage shall in no event exceed 23%.
19 The Director of Revenue shall certify the Annual Percentage
20 to the Comptroller on the last business day of the fiscal
21 year immediately preceding the fiscal year for which it is
22 to be effective.

23 (3) The Comptroller shall order transferred and the
24 Treasurer shall transfer from the Tobacco Settlement
25 Recovery Fund to the Income Tax Refund Fund (i) \$35,000,000
26 in January, 2001, (ii) \$35,000,000 in January, 2002, and

1 (iii) \$35,000,000 in January, 2003.

2 (d) Expenditures from Income Tax Refund Fund.

3 (1) Beginning January 1, 1989, money in the Income Tax
4 Refund Fund shall be expended exclusively for the purpose
5 of paying refunds resulting from overpayment of tax
6 liability under Section 201 of this Act, for paying rebates
7 under Section 208.1 in the event that the amounts in the
8 Homeowners' Tax Relief Fund are insufficient for that
9 purpose, and for making transfers pursuant to this
10 subsection (d).

11 (2) The Director shall order payment of refunds
12 resulting from overpayment of tax liability under Section
13 201 of this Act from the Income Tax Refund Fund only to the
14 extent that amounts collected pursuant to Section 201 of
15 this Act and transfers pursuant to this subsection (d) and
16 item (3) of subsection (c) have been deposited and retained
17 in the Fund.

18 (3) As soon as possible after the end of each fiscal
19 year, the Director shall order transferred and the State
20 Treasurer and State Comptroller shall transfer from the
21 Income Tax Refund Fund to the Personal Property Tax
22 Replacement Fund an amount, certified by the Director to
23 the Comptroller, equal to the excess of the amount
24 collected pursuant to subsections (c) and (d) of Section
25 201 of this Act deposited into the Income Tax Refund Fund
26 during the fiscal year over the amount of refunds resulting

1 from overpayment of tax liability under subsections (c) and
2 (d) of Section 201 of this Act paid from the Income Tax
3 Refund Fund during the fiscal year.

4 (4) As soon as possible after the end of each fiscal
5 year, the Director shall order transferred and the State
6 Treasurer and State Comptroller shall transfer from the
7 Personal Property Tax Replacement Fund to the Income Tax
8 Refund Fund an amount, certified by the Director to the
9 Comptroller, equal to the excess of the amount of refunds
10 resulting from overpayment of tax liability under
11 subsections (c) and (d) of Section 201 of this Act paid
12 from the Income Tax Refund Fund during the fiscal year over
13 the amount collected pursuant to subsections (c) and (d) of
14 Section 201 of this Act deposited into the Income Tax
15 Refund Fund during the fiscal year.

16 (4.5) As soon as possible after the end of fiscal year
17 1999 and of each fiscal year thereafter, the Director shall
18 order transferred and the State Treasurer and State
19 Comptroller shall transfer from the Income Tax Refund Fund
20 to the General Revenue Fund any surplus remaining in the
21 Income Tax Refund Fund as of the end of such fiscal year;
22 excluding for fiscal years 2000, 2001, and 2002 amounts
23 attributable to transfers under item (3) of subsection (c)
24 less refunds resulting from the earned income tax credit.

25 (5) This Act shall constitute an irrevocable and
26 continuing appropriation from the Income Tax Refund Fund

1 for the purpose of paying refunds upon the order of the
2 Director in accordance with the provisions of this Section.

3 (e) Deposits into the Education Assistance Fund and the
4 Income Tax Surcharge Local Government Distributive Fund.

5 On July 1, 1991, and thereafter, of the amounts collected
6 pursuant to subsections (a) and (b) of Section 201 of this Act,
7 minus deposits into the Income Tax Refund Fund, the Department
8 shall deposit 7.3% into the Education Assistance Fund in the
9 State Treasury. Beginning on the effective date of this
10 amendatory Act of the 97th General Assembly the Department
11 shall deposit 100% of the proceeds collected as a result of the
12 changes made to Section 1501 of this Act by this amendatory Act
13 of the 97th General Assembly into the Education Assistance
14 Fund. Beginning July 1, 1991, and continuing through January
15 31, 1993, of the amounts collected pursuant to subsections (a)
16 and (b) of Section 201 of the Illinois Income Tax Act, minus
17 deposits into the Income Tax Refund Fund, the Department shall
18 deposit 3.0% into the Income Tax Surcharge Local Government
19 Distributive Fund in the State Treasury. Beginning February 1,
20 1993 and continuing through June 30, 1993, of the amounts
21 collected pursuant to subsections (a) and (b) of Section 201 of
22 the Illinois Income Tax Act, minus deposits into the Income Tax
23 Refund Fund, the Department shall deposit 4.4% into the Income
24 Tax Surcharge Local Government Distributive Fund in the State
25 Treasury. Beginning July 1, 1993, and continuing through June
26 30, 1994, of the amounts collected under subsections (a) and

1 (b) of Section 201 of this Act, minus deposits into the Income
2 Tax Refund Fund, the Department shall deposit 1.475% into the
3 Income Tax Surcharge Local Government Distributive Fund in the
4 State Treasury.

5 (f) Deposits into the Fund for the Advancement of
6 Education. Beginning February 1, 2015, the Department shall
7 deposit the following portions of the revenue realized from the
8 tax imposed upon individuals, trusts, and estates by
9 subsections (a) and (b) of Section 201 of this Act during the
10 preceding month, minus deposits into the Income Tax Refund
11 Fund, into the Fund for the Advancement of Education:

12 (1) beginning February 1, 2015, and prior to February
13 1, 2025, 1/30; and

14 (2) beginning February 1, 2025, 1/26.

15 If the rate of tax imposed by subsection (a) and (b) of
16 Section 201 is reduced pursuant to Section 201.5 of this Act,
17 the Department shall not make the deposits required by this
18 subsection (f) on or after the effective date of the reduction.

19 (g) Deposits into the Commitment to Human Services Fund.
20 Beginning February 1, 2015, the Department shall deposit the
21 following portions of the revenue realized from the tax imposed
22 upon individuals, trusts, and estates by subsections (a) and
23 (b) of Section 201 of this Act during the preceding month,
24 minus deposits into the Income Tax Refund Fund, into the
25 Commitment to Human Services Fund:

26 (1) beginning February 1, 2015, and prior to February

1 1, 2025, 1/30; and

2 (2) beginning February 1, 2025, 1/26.

3 If the rate of tax imposed by subsection (a) and (b) of
4 Section 201 is reduced pursuant to Section 201.5 of this Act,
5 the Department shall not make the deposits required by this
6 subsection (g) on or after the effective date of the reduction.
7 (Source: P.A. 96-45, eff. 7-15-09; 96-328, eff. 8-11-09;
8 96-959, eff. 7-1-10; 96-1496, eff. 1-13-11; 97-72, eff.
9 7-1-11.)

10 (35 ILCS 5/1501) (from Ch. 120, par. 15-1501)

11 (Text of Section before amendment by P.A. 97-636)

12 Sec. 1501. Definitions.

13 (a) In general. When used in this Act, where not otherwise
14 distinctly expressed or manifestly incompatible with the
15 intent thereof:

16 (1) Business income. The term "business income" means
17 all income that may be treated as apportionable business
18 income under the Constitution of the United States.
19 Business income is net of the deductions allocable thereto.
20 Such term does not include compensation or the deductions
21 allocable thereto. For each taxable year beginning on or
22 after January 1, 2003, a taxpayer may elect to treat all
23 income other than compensation as business income. This
24 election shall be made in accordance with rules adopted by
25 the Department and, once made, shall be irrevocable.

1 (1.5) Captive real estate investment trust:

2 (A) The term "captive real estate investment
3 trust" means a corporation, trust, or association:

4 (i) that is considered a real estate
5 investment trust for the taxable year under
6 Section 856 of the Internal Revenue Code;

7 (ii) the certificates of beneficial interest
8 or shares of which are not regularly traded on an
9 established securities market; and

10 (iii) of which more than 50% of the voting
11 power or value of the beneficial interest or
12 shares, at any time during the last half of the
13 taxable year, is owned or controlled, directly,
14 indirectly, or constructively, by a single
15 corporation.

16 (B) The term "captive real estate investment
17 trust" does not include:

18 (i) a real estate investment trust of which
19 more than 50% of the voting power or value of the
20 beneficial interest or shares is owned or
21 controlled, directly, indirectly, or
22 constructively, by:

23 (a) a real estate investment trust, other
24 than a captive real estate investment trust;

25 (b) a person who is exempt from taxation
26 under Section 501 of the Internal Revenue Code,

1 and who is not required to treat income
2 received from the real estate investment trust
3 as unrelated business taxable income under
4 Section 512 of the Internal Revenue Code;

5 (c) a listed Australian property trust, if
6 no more than 50% of the voting power or value
7 of the beneficial interest or shares of that
8 trust, at any time during the last half of the
9 taxable year, is owned or controlled, directly
10 or indirectly, by a single person;

11 (d) an entity organized as a trust,
12 provided a listed Australian property trust
13 described in subparagraph (c) owns or
14 controls, directly or indirectly, or
15 constructively, 75% or more of the voting power
16 or value of the beneficial interests or shares
17 of such entity; or

18 (e) an entity that is organized outside of
19 the laws of the United States and that
20 satisfies all of the following criteria:

21 (1) at least 75% of the entity's total
22 asset value at the close of its taxable
23 year is represented by real estate assets
24 (as defined in Section 856(c)(5)(B) of the
25 Internal Revenue Code, thereby including
26 shares or certificates of beneficial

1 interest in any real estate investment
2 trust), cash and cash equivalents, and
3 U.S. Government securities;

4 (2) the entity is not subject to tax on
5 amounts that are distributed to its
6 beneficial owners or is exempt from
7 entity-level taxation;

8 (3) the entity distributes at least
9 85% of its taxable income (as computed in
10 the jurisdiction in which it is organized)
11 to the holders of its shares or
12 certificates of beneficial interest on an
13 annual basis;

14 (4) either (i) the shares or
15 beneficial interests of the entity are
16 regularly traded on an established
17 securities market or (ii) not more than 10%
18 of the voting power or value in the entity
19 is held, directly, indirectly, or
20 constructively, by a single entity or
21 individual; and

22 (5) the entity is organized in a
23 country that has entered into a tax treaty
24 with the United States; or

25 (ii) during its first taxable year for which it
26 elects to be treated as a real estate investment

1 trust under Section 856(c)(1) of the Internal
2 Revenue Code, a real estate investment trust the
3 certificates of beneficial interest or shares of
4 which are not regularly traded on an established
5 securities market, but only if the certificates of
6 beneficial interest or shares of the real estate
7 investment trust are regularly traded on an
8 established securities market prior to the earlier
9 of the due date (including extensions) for filing
10 its return under this Act for that first taxable
11 year or the date it actually files that return.

12 (C) For the purposes of this subsection (1.5), the
13 constructive ownership rules prescribed under Section
14 318(a) of the Internal Revenue Code, as modified by
15 Section 856(d)(5) of the Internal Revenue Code, apply
16 in determining the ownership of stock, assets, or net
17 profits of any person.

18 (2) Commercial domicile. The term "commercial
19 domicile" means the principal place from which the trade or
20 business of the taxpayer is directed or managed.

21 (3) Compensation. The term "compensation" means wages,
22 salaries, commissions and any other form of remuneration
23 paid to employees for personal services.

24 (4) Corporation. The term "corporation" includes
25 associations, joint-stock companies, insurance companies
26 and cooperatives. Any entity, including a limited

1 liability company formed under the Illinois Limited
2 Liability Company Act, shall be treated as a corporation if
3 it is so classified for federal income tax purposes.

4 (5) Department. The term "Department" means the
5 Department of Revenue of this State.

6 (6) Director. The term "Director" means the Director of
7 Revenue of this State.

8 (7) Fiduciary. The term "fiduciary" means a guardian,
9 trustee, executor, administrator, receiver, or any person
10 acting in any fiduciary capacity for any person.

11 (8) Financial organization.

12 (A) The term "financial organization" means any
13 bank, bank holding company, trust company, savings
14 bank, industrial bank, land bank, safe deposit
15 company, private banker, savings and loan association,
16 building and loan association, credit union, currency
17 exchange, cooperative bank, small loan company, sales
18 finance company, investment company, or any person
19 which is owned by a bank or bank holding company. For
20 the purpose of this Section a "person" will include
21 only those persons which a bank holding company may
22 acquire and hold an interest in, directly or
23 indirectly, under the provisions of the Bank Holding
24 Company Act of 1956 (12 U.S.C. 1841, et seq.), except
25 where interests in any person must be disposed of
26 within certain required time limits under the Bank

1 Holding Company Act of 1956.

2 (B) For purposes of subparagraph (A) of this
3 paragraph, the term "bank" includes (i) any entity that
4 is regulated by the Comptroller of the Currency under
5 the National Bank Act, or by the Federal Reserve Board,
6 or by the Federal Deposit Insurance Corporation and
7 (ii) any federally or State chartered bank operating as
8 a credit card bank.

9 (C) For purposes of subparagraph (A) of this
10 paragraph, the term "sales finance company" has the
11 meaning provided in the following item (i) or (ii):

12 (i) A person primarily engaged in one or more
13 of the following businesses: the business of
14 purchasing customer receivables, the business of
15 making loans upon the security of customer
16 receivables, the business of making loans for the
17 express purpose of funding purchases of tangible
18 personal property or services by the borrower, or
19 the business of finance leasing. For purposes of
20 this item (i), "customer receivable" means:

21 (a) a retail installment contract or
22 retail charge agreement within the meaning of
23 the Sales Finance Agency Act, the Retail
24 Installment Sales Act, or the Motor Vehicle
25 Retail Installment Sales Act;

26 (b) an installment, charge, credit, or

1 similar contract or agreement arising from the
2 sale of tangible personal property or services
3 in a transaction involving a deferred payment
4 price payable in one or more installments
5 subsequent to the sale; or

6 (c) the outstanding balance of a contract
7 or agreement described in provisions (a) or (b)
8 of this item (i).

9 A customer receivable need not provide for
10 payment of interest on deferred payments. A sales
11 finance company may purchase a customer receivable
12 from, or make a loan secured by a customer
13 receivable to, the seller in the original
14 transaction or to a person who purchased the
15 customer receivable directly or indirectly from
16 that seller.

17 (ii) A corporation meeting each of the
18 following criteria:

19 (a) the corporation must be a member of an
20 "affiliated group" within the meaning of
21 Section 1504(a) of the Internal Revenue Code,
22 determined without regard to Section 1504(b)
23 of the Internal Revenue Code;

24 (b) more than 50% of the gross income of
25 the corporation for the taxable year must be
26 interest income derived from qualifying loans.

1 A "qualifying loan" is a loan made to a member
2 of the corporation's affiliated group that
3 originates customer receivables (within the
4 meaning of item (i)) or to whom customer
5 receivables originated by a member of the
6 affiliated group have been transferred, to the
7 extent the average outstanding balance of
8 loans from that corporation to members of its
9 affiliated group during the taxable year do not
10 exceed the limitation amount for that
11 corporation. The "limitation amount" for a
12 corporation is the average outstanding
13 balances during the taxable year of customer
14 receivables (within the meaning of item (i))
15 originated by all members of the affiliated
16 group. If the average outstanding balances of
17 the loans made by a corporation to members of
18 its affiliated group exceed the limitation
19 amount, the interest income of that
20 corporation from qualifying loans shall be
21 equal to its interest income from loans to
22 members of its affiliated groups times a
23 fraction equal to the limitation amount
24 divided by the average outstanding balances of
25 the loans made by that corporation to members
26 of its affiliated group;

1 (c) the total of all shareholder's equity
2 (including, without limitation, paid-in
3 capital on common and preferred stock and
4 retained earnings) of the corporation plus the
5 total of all of its loans, advances, and other
6 obligations payable or owed to members of its
7 affiliated group may not exceed 20% of the
8 total assets of the corporation at any time
9 during the tax year; and

10 (d) more than 50% of all interest-bearing
11 obligations of the affiliated group payable to
12 persons outside the group determined in
13 accordance with generally accepted accounting
14 principles must be obligations of the
15 corporation.

16 This amendatory Act of the 91st General Assembly is
17 declaratory of existing law.

18 (D) Subparagraphs (B) and (C) of this paragraph are
19 declaratory of existing law and apply retroactively,
20 for all tax years beginning on or before December 31,
21 1996, to all original returns, to all amended returns
22 filed no later than 30 days after the effective date of
23 this amendatory Act of 1996, and to all notices issued
24 on or before the effective date of this amendatory Act
25 of 1996 under subsection (a) of Section 903, subsection
26 (a) of Section 904, subsection (e) of Section 909, or

1 Section 912. A taxpayer that is a "financial
2 organization" that engages in any transaction with an
3 affiliate shall be a "financial organization" for all
4 purposes of this Act.

5 (E) For all tax years beginning on or before
6 December 31, 1996, a taxpayer that falls within the
7 definition of a "financial organization" under
8 subparagraphs (B) or (C) of this paragraph, but who
9 does not fall within the definition of a "financial
10 organization" under the Proposed Regulations issued by
11 the Department of Revenue on July 19, 1996, may
12 irrevocably elect to apply the Proposed Regulations
13 for all of those years as though the Proposed
14 Regulations had been lawfully promulgated, adopted,
15 and in effect for all of those years. For purposes of
16 applying subparagraphs (B) or (C) of this paragraph to
17 all of those years, the election allowed by this
18 subparagraph applies only to the taxpayer making the
19 election and to those members of the taxpayer's unitary
20 business group who are ordinarily required to
21 apportion business income under the same subsection of
22 Section 304 of this Act as the taxpayer making the
23 election. No election allowed by this subparagraph
24 shall be made under a claim filed under subsection (d)
25 of Section 909 more than 30 days after the effective
26 date of this amendatory Act of 1996.

1 (F) Finance Leases. For purposes of this
2 subsection, a finance lease shall be treated as a loan
3 or other extension of credit, rather than as a lease,
4 regardless of how the transaction is characterized for
5 any other purpose, including the purposes of any
6 regulatory agency to which the lessor is subject. A
7 finance lease is any transaction in the form of a lease
8 in which the lessee is treated as the owner of the
9 leased asset entitled to any deduction for
10 depreciation allowed under Section 167 of the Internal
11 Revenue Code.

12 (9) Fiscal year. The term "fiscal year" means an
13 accounting period of 12 months ending on the last day of
14 any month other than December.

15 (9.5) Fixed place of business. The term "fixed place of
16 business" has the same meaning as that term is given in
17 Section 864 of the Internal Revenue Code and the related
18 Treasury regulations.

19 (10) Includes and including. The terms "includes" and
20 "including" when used in a definition contained in this Act
21 shall not be deemed to exclude other things otherwise
22 within the meaning of the term defined.

23 (11) Internal Revenue Code. The term "Internal Revenue
24 Code" means the United States Internal Revenue Code of 1954
25 or any successor law or laws relating to federal income
26 taxes in effect for the taxable year.

1 (11.5) Investment partnership.

2 (A) The term "investment partnership" means any
3 entity that is treated as a partnership for federal
4 income tax purposes that meets the following
5 requirements:

6 (i) no less than 90% of the partnership's cost
7 of its total assets consists of qualifying
8 investment securities, deposits at banks or other
9 financial institutions, and office space and
10 equipment reasonably necessary to carry on its
11 activities as an investment partnership;

12 (ii) no less than 90% of its gross income
13 consists of interest, dividends, and gains from
14 the sale or exchange of qualifying investment
15 securities; and

16 (iii) the partnership is not a dealer in
17 qualifying investment securities.

18 (B) For purposes of this paragraph (11.5), the term
19 "qualifying investment securities" includes all of the
20 following:

21 (i) common stock, including preferred or debt
22 securities convertible into common stock, and
23 preferred stock;

24 (ii) bonds, debentures, and other debt
25 securities;

26 (iii) foreign and domestic currency deposits

1 secured by federal, state, or local governmental
2 agencies;

3 (iv) mortgage or asset-backed securities
4 secured by federal, state, or local governmental
5 agencies;

6 (v) repurchase agreements and loan
7 participations;

8 (vi) foreign currency exchange contracts and
9 forward and futures contracts on foreign
10 currencies;

11 (vii) stock and bond index securities and
12 futures contracts and other similar financial
13 securities and futures contracts on those
14 securities;

15 (viii) options for the purchase or sale of any
16 of the securities, currencies, contracts, or
17 financial instruments described in items (i) to
18 (vii), inclusive;

19 (ix) regulated futures contracts;

20 (x) commodities (not described in Section
21 1221(a)(1) of the Internal Revenue Code) or
22 futures, forwards, and options with respect to
23 such commodities, provided, however, that any item
24 of a physical commodity to which title is actually
25 acquired in the partnership's capacity as a dealer
26 in such commodity shall not be a qualifying

1 investment security;
2 (xi) derivatives; and
3 (xii) a partnership interest in another
4 partnership that is an investment partnership.

5 (12) Mathematical error. The term "mathematical error"
6 includes the following types of errors, omissions, or
7 defects in a return filed by a taxpayer which prevents
8 acceptance of the return as filed for processing:

9 (A) arithmetic errors or incorrect computations on
10 the return or supporting schedules;

11 (B) entries on the wrong lines;

12 (C) omission of required supporting forms or
13 schedules or the omission of the information in whole
14 or in part called for thereon; and

15 (D) an attempt to claim, exclude, deduct, or
16 improperly report, in a manner directly contrary to the
17 provisions of the Act and regulations thereunder any
18 item of income, exemption, deduction, or credit.

19 (13) Nonbusiness income. The term "nonbusiness income"
20 means all income other than business income or
21 compensation.

22 (14) Nonresident. The term "nonresident" means a
23 person who is not a resident.

24 (15) Paid, incurred and accrued. The terms "paid",
25 "incurred" and "accrued" shall be construed according to
26 the method of accounting upon the basis of which the

1 person's base income is computed under this Act.

2 (16) Partnership and partner. The term "partnership"
3 includes a syndicate, group, pool, joint venture or other
4 unincorporated organization, through or by means of which
5 any business, financial operation, or venture is carried
6 on, and which is not, within the meaning of this Act, a
7 trust or estate or a corporation; and the term "partner"
8 includes a member in such syndicate, group, pool, joint
9 venture or organization.

10 The term "partnership" includes any entity, including
11 a limited liability company formed under the Illinois
12 Limited Liability Company Act, classified as a partnership
13 for federal income tax purposes.

14 The term "partnership" does not include a syndicate,
15 group, pool, joint venture, or other unincorporated
16 organization established for the sole purpose of playing
17 the Illinois State Lottery.

18 (17) Part-year resident. The term "part-year resident"
19 means an individual who became a resident during the
20 taxable year or ceased to be a resident during the taxable
21 year. Under Section 1501(a)(20)(A)(i) residence commences
22 with presence in this State for other than a temporary or
23 transitory purpose and ceases with absence from this State
24 for other than a temporary or transitory purpose. Under
25 Section 1501(a)(20)(A)(ii) residence commences with the
26 establishment of domicile in this State and ceases with the

1 establishment of domicile in another State.

2 (18) Person. The term "person" shall be construed to
3 mean and include an individual, a trust, estate,
4 partnership, association, firm, company, corporation,
5 limited liability company, or fiduciary. For purposes of
6 Section 1301 and 1302 of this Act, a "person" means (i) an
7 individual, (ii) a corporation, (iii) an officer, agent, or
8 employee of a corporation, (iv) a member, agent or employee
9 of a partnership, or (v) a member, manager, employee,
10 officer, director, or agent of a limited liability company
11 who in such capacity commits an offense specified in
12 Section 1301 and 1302.

13 (18A) Records. The term "records" includes all data
14 maintained by the taxpayer, whether on paper, microfilm,
15 microfiche, or any type of machine-sensible data
16 compilation.

17 (19) Regulations. The term "regulations" includes
18 rules promulgated and forms prescribed by the Department.

19 (20) Resident. The term "resident" means:

20 (A) an individual (i) who is in this State for
21 other than a temporary or transitory purpose during the
22 taxable year; or (ii) who is domiciled in this State
23 but is absent from the State for a temporary or
24 transitory purpose during the taxable year;

25 (B) The estate of a decedent who at his or her
26 death was domiciled in this State;

1 (C) A trust created by a will of a decedent who at
2 his death was domiciled in this State; and

3 (D) An irrevocable trust, the grantor of which was
4 domiciled in this State at the time such trust became
5 irrevocable. For purpose of this subparagraph, a trust
6 shall be considered irrevocable to the extent that the
7 grantor is not treated as the owner thereof under
8 Sections 671 through 678 of the Internal Revenue Code.

9 (21) Sales. The term "sales" means all gross receipts
10 of the taxpayer not allocated under Sections 301, 302 and
11 303.

12 (22) State. The term "state" when applied to a
13 jurisdiction other than this State means any state of the
14 United States, the District of Columbia, the Commonwealth
15 of Puerto Rico, any Territory or Possession of the United
16 States, and any foreign country, or any political
17 subdivision of any of the foregoing. For purposes of the
18 foreign tax credit under Section 601, the term "state"
19 means any state of the United States, the District of
20 Columbia, the Commonwealth of Puerto Rico, and any
21 territory or possession of the United States, or any
22 political subdivision of any of the foregoing, effective
23 for tax years ending on or after December 31, 1989.

24 (23) Taxable year. The term "taxable year" means the
25 calendar year, or the fiscal year ending during such
26 calendar year, upon the basis of which the base income is

1 computed under this Act. "Taxable year" means, in the case
2 of a return made for a fractional part of a year under the
3 provisions of this Act, the period for which such return is
4 made.

5 (24) Taxpayer. The term "taxpayer" means any person
6 subject to the tax imposed by this Act.

7 (25) International banking facility. The term
8 international banking facility shall have the same meaning
9 as is set forth in the Illinois Banking Act or as is set
10 forth in the laws of the United States or regulations of
11 the Board of Governors of the Federal Reserve System.

12 (26) Income Tax Return Preparer.

13 (A) The term "income tax return preparer" means any
14 person who prepares for compensation, or who employs
15 one or more persons to prepare for compensation, any
16 return of tax imposed by this Act or any claim for
17 refund of tax imposed by this Act. The preparation of a
18 substantial portion of a return or claim for refund
19 shall be treated as the preparation of that return or
20 claim for refund.

21 (B) A person is not an income tax return preparer
22 if all he or she does is

23 (i) furnish typing, reproducing, or other
24 mechanical assistance;

25 (ii) prepare returns or claims for refunds for
26 the employer by whom he or she is regularly and

1 continuously employed;

2 (iii) prepare as a fiduciary returns or claims
3 for refunds for any person; or

4 (iv) prepare claims for refunds for a taxpayer
5 in response to any notice of deficiency issued to
6 that taxpayer or in response to any waiver of
7 restriction after the commencement of an audit of
8 that taxpayer or of another taxpayer if a
9 determination in the audit of the other taxpayer
10 directly or indirectly affects the tax liability
11 of the taxpayer whose claims he or she is
12 preparing.

13 (27) Unitary business group.

14 (A) The term "unitary business group" means a group
15 of persons related through common ownership whose
16 business activities are integrated with, dependent
17 upon and contribute to each other. The group will not
18 include those members whose business activity outside
19 the United States is 80% or more of any such member's
20 total business activity; for purposes of this
21 paragraph and clause (a)(3)(B)(ii) of Section 304,
22 business activity within the United States shall be
23 measured by means of the factors ordinarily applicable
24 under subsections (a), (b), (c), (d), or (h) of Section
25 304 except that, in the case of members ordinarily
26 required to apportion business income by means of the 3

1 factor formula of property, payroll and sales
2 specified in subsection (a) of Section 304, including
3 the formula as weighted in subsection (h) of Section
4 304, such members shall not use the sales factor in the
5 computation and the results of the property and payroll
6 factor computations of subsection (a) of Section 304
7 shall be divided by 2 (by one if either the property or
8 payroll factor has a denominator of zero). The
9 computation required by the preceding sentence shall,
10 in each case, involve the division of the member's
11 property, payroll, or revenue miles in the United
12 States, insurance premiums on property or risk in the
13 United States, or financial organization business
14 income from sources within the United States, as the
15 case may be, by the respective worldwide figures for
16 such items. Common ownership in the case of
17 corporations is the direct or indirect control or
18 ownership of more than 50% of the outstanding voting
19 stock of the persons carrying on unitary business
20 activity. Unitary business activity can ordinarily be
21 illustrated where the activities of the members are:
22 (1) in the same general line (such as manufacturing,
23 wholesaling, retailing of tangible personal property,
24 insurance, transportation or finance); or (2) are
25 steps in a vertically structured enterprise or process
26 (such as the steps involved in the production of

1 natural resources, which might include exploration,
2 mining, refining, and marketing); and, in either
3 instance, the members are functionally integrated
4 through the exercise of strong centralized management
5 (where, for example, authority over such matters as
6 purchasing, financing, tax compliance, product line,
7 personnel, marketing and capital investment is not
8 left to each member).

9 (B) In no event, shall any unitary business group
10 include members which are ordinarily required to
11 apportion business income under different subsections
12 of Section 304 except that for tax years ending on or
13 after December 31, 1987 this prohibition shall not
14 apply to a holding company that would otherwise be a
15 member of a unitary business group with taxpayers that
16 apportion business income under any of subsections
17 (b), (c), or (d) of Section 304. If a unitary business
18 group would, but for the preceding sentence, include
19 members that are ordinarily required to apportion
20 business income under different subsections of Section
21 304, then for each subsection of Section 304 for which
22 there are two or more members, there shall be a
23 separate unitary business group composed of such
24 members. For purposes of the preceding two sentences, a
25 member is "ordinarily required to apportion business
26 income" under a particular subsection of Section 304 if

1 it would be required to use the apportionment method
2 prescribed by such subsection except for the fact that
3 it derives business income solely from Illinois. As
4 used in this paragraph, the phrase "United States"
5 means ~~only~~ the 50 states and the District of Columbia,
6 and but does not include any territory or possession of
7 the United States, but, for taxable years ending on or
8 after December 31, 2012, does include ~~or~~ any area over
9 which the United States has asserted jurisdiction or
10 claimed exclusive rights with respect to the
11 exploration for or exploitation of natural resources.

12 (C) Holding companies.

13 (i) For purposes of this subparagraph, a
14 "holding company" is a corporation (other than a
15 corporation that is a financial organization under
16 paragraph (8) of this subsection (a) of Section
17 1501 because it is a bank holding company under the
18 provisions of the Bank Holding Company Act of 1956
19 (12 U.S.C. 1841, et seq.) or because it is owned by
20 a bank or a bank holding company) that owns a
21 controlling interest in one or more other
22 taxpayers ("controlled taxpayers"); that, during
23 the period that includes the taxable year and the 2
24 immediately preceding taxable years or, if the
25 corporation was formed during the current or
26 immediately preceding taxable year, the taxable

1 years in which the corporation has been in
2 existence, derived substantially all its gross
3 income from dividends, interest, rents, royalties,
4 fees or other charges received from controlled
5 taxpayers for the provision of services, and gains
6 on the sale or other disposition of interests in
7 controlled taxpayers or in property leased or
8 licensed to controlled taxpayers or used by the
9 taxpayer in providing services to controlled
10 taxpayers; and that incurs no substantial expenses
11 other than expenses (including interest and other
12 costs of borrowing) incurred in connection with
13 the acquisition and holding of interests in
14 controlled taxpayers and in the provision of
15 services to controlled taxpayers or in the leasing
16 or licensing of property to controlled taxpayers.

17 (ii) The income of a holding company which is a
18 member of more than one unitary business group
19 shall be included in each unitary business group of
20 which it is a member on a pro rata basis, by
21 including in each unitary business group that
22 portion of the base income of the holding company
23 that bears the same proportion to the total base
24 income of the holding company as the gross receipts
25 of the unitary business group bears to the combined
26 gross receipts of all unitary business groups (in

1 both cases without regard to the holding company)
2 or on any other reasonable basis, consistently
3 applied.

4 (iii) A holding company shall apportion its
5 business income under the subsection of Section
6 304 used by the other members of its unitary
7 business group. The apportionment factors of a
8 holding company which would be a member of more
9 than one unitary business group shall be included
10 with the apportionment factors of each unitary
11 business group of which it is a member on a pro
12 rata basis using the same method used in clause
13 (ii).

14 (iv) The provisions of this subparagraph (C)
15 are intended to clarify existing law.

16 (D) If including the base income and factors of a
17 holding company in more than one unitary business group
18 under subparagraph (C) does not fairly reflect the
19 degree of integration between the holding company and
20 one or more of the unitary business groups, the
21 dependence of the holding company and one or more of
22 the unitary business groups upon each other, or the
23 contributions between the holding company and one or
24 more of the unitary business groups, the holding
25 company may petition the Director, under the
26 procedures provided under Section 304(f), for

1 permission to include all base income and factors of
2 the holding company only with members of a unitary
3 business group apportioning their business income
4 under one subsection of subsections (a), (b), (c), or
5 (d) of Section 304. If the petition is granted, the
6 holding company shall be included in a unitary business
7 group only with persons apportioning their business
8 income under the selected subsection of Section 304
9 until the Director grants a petition of the holding
10 company either to be included in more than one unitary
11 business group under subparagraph (C) or to include its
12 base income and factors only with members of a unitary
13 business group apportioning their business income
14 under a different subsection of Section 304.

15 (E) If the unitary business group members'
16 accounting periods differ, the common parent's
17 accounting period or, if there is no common parent, the
18 accounting period of the member that is expected to
19 have, on a recurring basis, the greatest Illinois
20 income tax liability must be used to determine whether
21 to use the apportionment method provided in subsection
22 (a) or subsection (h) of Section 304. The prohibition
23 against membership in a unitary business group for
24 taxpayers ordinarily required to apportion income
25 under different subsections of Section 304 does not
26 apply to taxpayers required to apportion income under

1 subsection (a) and subsection (h) of Section 304. The
2 provisions of this amendatory Act of 1998 apply to tax
3 years ending on or after December 31, 1998.

4 (28) Subchapter S corporation. The term "Subchapter S
5 corporation" means a corporation for which there is in
6 effect an election under Section 1362 of the Internal
7 Revenue Code, or for which there is a federal election to
8 opt out of the provisions of the Subchapter S Revision Act
9 of 1982 and have applied instead the prior federal
10 Subchapter S rules as in effect on July 1, 1982.

11 (30) Foreign person. The term "foreign person" means
12 any person who is a nonresident alien individual and any
13 nonindividual entity, regardless of where created or
14 organized, whose business activity outside the United
15 States is 80% or more of the entity's total business
16 activity.

17 (b) Other definitions.

18 (1) Words denoting number, gender, and so forth, when
19 used in this Act, where not otherwise distinctly expressed
20 or manifestly incompatible with the intent thereof:

21 (A) Words importing the singular include and apply
22 to several persons, parties or things;

23 (B) Words importing the plural include the
24 singular; and

25 (C) Words importing the masculine gender include

1 the feminine as well.

2 (2) "Company" or "association" as including successors
3 and assigns. The word "company" or "association", when used
4 in reference to a corporation, shall be deemed to embrace
5 the words "successors and assigns of such company or
6 association", and in like manner as if these last-named
7 words, or words of similar import, were expressed.

8 (3) Other terms. Any term used in any Section of this
9 Act with respect to the application of, or in connection
10 with, the provisions of any other Section of this Act shall
11 have the same meaning as in such other Section.

12 (Source: P.A. 96-641, eff. 8-24-09; 97-507, eff. 8-23-11.)

13 (Text of Section after amendment by P.A. 97-636)

14 Sec. 1501. Definitions.

15 (a) In general. When used in this Act, where not otherwise
16 distinctly expressed or manifestly incompatible with the
17 intent thereof:

18 (1) Business income. The term "business income" means
19 all income that may be treated as apportionable business
20 income under the Constitution of the United States.
21 Business income is net of the deductions allocable thereto.
22 Such term does not include compensation or the deductions
23 allocable thereto. For each taxable year beginning on or
24 after January 1, 2003, a taxpayer may elect to treat all
25 income other than compensation as business income. This

1 election shall be made in accordance with rules adopted by
2 the Department and, once made, shall be irrevocable.

3 (1.5) Captive real estate investment trust:

4 (A) The term "captive real estate investment
5 trust" means a corporation, trust, or association:

6 (i) that is considered a real estate
7 investment trust for the taxable year under
8 Section 856 of the Internal Revenue Code;

9 (ii) the certificates of beneficial interest
10 or shares of which are not regularly traded on an
11 established securities market; and

12 (iii) of which more than 50% of the voting
13 power or value of the beneficial interest or
14 shares, at any time during the last half of the
15 taxable year, is owned or controlled, directly,
16 indirectly, or constructively, by a single
17 corporation.

18 (B) The term "captive real estate investment
19 trust" does not include:

20 (i) a real estate investment trust of which
21 more than 50% of the voting power or value of the
22 beneficial interest or shares is owned or
23 controlled, directly, indirectly, or
24 constructively, by:

25 (a) a real estate investment trust, other
26 than a captive real estate investment trust;

1 (b) a person who is exempt from taxation
2 under Section 501 of the Internal Revenue Code,
3 and who is not required to treat income
4 received from the real estate investment trust
5 as unrelated business taxable income under
6 Section 512 of the Internal Revenue Code;

7 (c) a listed Australian property trust, if
8 no more than 50% of the voting power or value
9 of the beneficial interest or shares of that
10 trust, at any time during the last half of the
11 taxable year, is owned or controlled, directly
12 or indirectly, by a single person;

13 (d) an entity organized as a trust,
14 provided a listed Australian property trust
15 described in subparagraph (c) owns or
16 controls, directly or indirectly, or
17 constructively, 75% or more of the voting power
18 or value of the beneficial interests or shares
19 of such entity; or

20 (e) an entity that is organized outside of
21 the laws of the United States and that
22 satisfies all of the following criteria:

23 (1) at least 75% of the entity's total
24 asset value at the close of its taxable
25 year is represented by real estate assets
26 (as defined in Section 856(c)(5)(B) of the

1 Internal Revenue Code, thereby including
2 shares or certificates of beneficial
3 interest in any real estate investment
4 trust), cash and cash equivalents, and
5 U.S. Government securities;

6 (2) the entity is not subject to tax on
7 amounts that are distributed to its
8 beneficial owners or is exempt from
9 entity-level taxation;

10 (3) the entity distributes at least
11 85% of its taxable income (as computed in
12 the jurisdiction in which it is organized)
13 to the holders of its shares or
14 certificates of beneficial interest on an
15 annual basis;

16 (4) either (i) the shares or
17 beneficial interests of the entity are
18 regularly traded on an established
19 securities market or (ii) not more than 10%
20 of the voting power or value in the entity
21 is held, directly, indirectly, or
22 constructively, by a single entity or
23 individual; and

24 (5) the entity is organized in a
25 country that has entered into a tax treaty
26 with the United States; or

1 (ii) during its first taxable year for which it
2 elects to be treated as a real estate investment
3 trust under Section 856(c)(1) of the Internal
4 Revenue Code, a real estate investment trust the
5 certificates of beneficial interest or shares of
6 which are not regularly traded on an established
7 securities market, but only if the certificates of
8 beneficial interest or shares of the real estate
9 investment trust are regularly traded on an
10 established securities market prior to the earlier
11 of the due date (including extensions) for filing
12 its return under this Act for that first taxable
13 year or the date it actually files that return.

14 (C) For the purposes of this subsection (1.5), the
15 constructive ownership rules prescribed under Section
16 318(a) of the Internal Revenue Code, as modified by
17 Section 856(d)(5) of the Internal Revenue Code, apply
18 in determining the ownership of stock, assets, or net
19 profits of any person.

20 (2) Commercial domicile. The term "commercial
21 domicile" means the principal place from which the trade or
22 business of the taxpayer is directed or managed.

23 (3) Compensation. The term "compensation" means wages,
24 salaries, commissions and any other form of remuneration
25 paid to employees for personal services.

26 (4) Corporation. The term "corporation" includes

1 associations, joint-stock companies, insurance companies
2 and cooperatives. Any entity, including a limited
3 liability company formed under the Illinois Limited
4 Liability Company Act, shall be treated as a corporation if
5 it is so classified for federal income tax purposes.

6 (5) Department. The term "Department" means the
7 Department of Revenue of this State.

8 (6) Director. The term "Director" means the Director of
9 Revenue of this State.

10 (7) Fiduciary. The term "fiduciary" means a guardian,
11 trustee, executor, administrator, receiver, or any person
12 acting in any fiduciary capacity for any person.

13 (8) Financial organization.

14 (A) The term "financial organization" means any
15 bank, bank holding company, trust company, savings
16 bank, industrial bank, land bank, safe deposit
17 company, private banker, savings and loan association,
18 building and loan association, credit union, currency
19 exchange, cooperative bank, small loan company, sales
20 finance company, investment company, or any person
21 which is owned by a bank or bank holding company. For
22 the purpose of this Section a "person" will include
23 only those persons which a bank holding company may
24 acquire and hold an interest in, directly or
25 indirectly, under the provisions of the Bank Holding
26 Company Act of 1956 (12 U.S.C. 1841, et seq.), except

1 where interests in any person must be disposed of
2 within certain required time limits under the Bank
3 Holding Company Act of 1956.

4 (B) For purposes of subparagraph (A) of this
5 paragraph, the term "bank" includes (i) any entity that
6 is regulated by the Comptroller of the Currency under
7 the National Bank Act, or by the Federal Reserve Board,
8 or by the Federal Deposit Insurance Corporation and
9 (ii) any federally or State chartered bank operating as
10 a credit card bank.

11 (C) For purposes of subparagraph (A) of this
12 paragraph, the term "sales finance company" has the
13 meaning provided in the following item (i) or (ii):

14 (i) A person primarily engaged in one or more
15 of the following businesses: the business of
16 purchasing customer receivables, the business of
17 making loans upon the security of customer
18 receivables, the business of making loans for the
19 express purpose of funding purchases of tangible
20 personal property or services by the borrower, or
21 the business of finance leasing. For purposes of
22 this item (i), "customer receivable" means:

23 (a) a retail installment contract or
24 retail charge agreement within the meaning of
25 the Sales Finance Agency Act, the Retail
26 Installment Sales Act, or the Motor Vehicle

1 Retail Installment Sales Act;

2 (b) an installment, charge, credit, or
3 similar contract or agreement arising from the
4 sale of tangible personal property or services
5 in a transaction involving a deferred payment
6 price payable in one or more installments
7 subsequent to the sale; or

8 (c) the outstanding balance of a contract
9 or agreement described in provisions (a) or (b)
10 of this item (i).

11 A customer receivable need not provide for
12 payment of interest on deferred payments. A sales
13 finance company may purchase a customer receivable
14 from, or make a loan secured by a customer
15 receivable to, the seller in the original
16 transaction or to a person who purchased the
17 customer receivable directly or indirectly from
18 that seller.

19 (ii) A corporation meeting each of the
20 following criteria:

21 (a) the corporation must be a member of an
22 "affiliated group" within the meaning of
23 Section 1504(a) of the Internal Revenue Code,
24 determined without regard to Section 1504(b)
25 of the Internal Revenue Code;

26 (b) more than 50% of the gross income of

1 the corporation for the taxable year must be
2 interest income derived from qualifying loans.
3 A "qualifying loan" is a loan made to a member
4 of the corporation's affiliated group that
5 originates customer receivables (within the
6 meaning of item (i)) or to whom customer
7 receivables originated by a member of the
8 affiliated group have been transferred, to the
9 extent the average outstanding balance of
10 loans from that corporation to members of its
11 affiliated group during the taxable year do not
12 exceed the limitation amount for that
13 corporation. The "limitation amount" for a
14 corporation is the average outstanding
15 balances during the taxable year of customer
16 receivables (within the meaning of item (i))
17 originated by all members of the affiliated
18 group. If the average outstanding balances of
19 the loans made by a corporation to members of
20 its affiliated group exceed the limitation
21 amount, the interest income of that
22 corporation from qualifying loans shall be
23 equal to its interest income from loans to
24 members of its affiliated groups times a
25 fraction equal to the limitation amount
26 divided by the average outstanding balances of

1 the loans made by that corporation to members
2 of its affiliated group;

3 (c) the total of all shareholder's equity
4 (including, without limitation, paid-in
5 capital on common and preferred stock and
6 retained earnings) of the corporation plus the
7 total of all of its loans, advances, and other
8 obligations payable or owed to members of its
9 affiliated group may not exceed 20% of the
10 total assets of the corporation at any time
11 during the tax year; and

12 (d) more than 50% of all interest-bearing
13 obligations of the affiliated group payable to
14 persons outside the group determined in
15 accordance with generally accepted accounting
16 principles must be obligations of the
17 corporation.

18 This amendatory Act of the 91st General Assembly is
19 declaratory of existing law.

20 (D) Subparagraphs (B) and (C) of this paragraph are
21 declaratory of existing law and apply retroactively,
22 for all tax years beginning on or before December 31,
23 1996, to all original returns, to all amended returns
24 filed no later than 30 days after the effective date of
25 this amendatory Act of 1996, and to all notices issued
26 on or before the effective date of this amendatory Act

1 of 1996 under subsection (a) of Section 903, subsection
2 (a) of Section 904, subsection (e) of Section 909, or
3 Section 912. A taxpayer that is a "financial
4 organization" that engages in any transaction with an
5 affiliate shall be a "financial organization" for all
6 purposes of this Act.

7 (E) For all tax years beginning on or before
8 December 31, 1996, a taxpayer that falls within the
9 definition of a "financial organization" under
10 subparagraphs (B) or (C) of this paragraph, but who
11 does not fall within the definition of a "financial
12 organization" under the Proposed Regulations issued by
13 the Department of Revenue on July 19, 1996, may
14 irrevocably elect to apply the Proposed Regulations
15 for all of those years as though the Proposed
16 Regulations had been lawfully promulgated, adopted,
17 and in effect for all of those years. For purposes of
18 applying subparagraphs (B) or (C) of this paragraph to
19 all of those years, the election allowed by this
20 subparagraph applies only to the taxpayer making the
21 election and to those members of the taxpayer's unitary
22 business group who are ordinarily required to
23 apportion business income under the same subsection of
24 Section 304 of this Act as the taxpayer making the
25 election. No election allowed by this subparagraph
26 shall be made under a claim filed under subsection (d)

1 of Section 909 more than 30 days after the effective
2 date of this amendatory Act of 1996.

3 (F) Finance Leases. For purposes of this
4 subsection, a finance lease shall be treated as a loan
5 or other extension of credit, rather than as a lease,
6 regardless of how the transaction is characterized for
7 any other purpose, including the purposes of any
8 regulatory agency to which the lessor is subject. A
9 finance lease is any transaction in the form of a lease
10 in which the lessee is treated as the owner of the
11 leased asset entitled to any deduction for
12 depreciation allowed under Section 167 of the Internal
13 Revenue Code.

14 (9) Fiscal year. The term "fiscal year" means an
15 accounting period of 12 months ending on the last day of
16 any month other than December.

17 (9.5) Fixed place of business. The term "fixed place of
18 business" has the same meaning as that term is given in
19 Section 864 of the Internal Revenue Code and the related
20 Treasury regulations.

21 (10) Includes and including. The terms "includes" and
22 "including" when used in a definition contained in this Act
23 shall not be deemed to exclude other things otherwise
24 within the meaning of the term defined.

25 (11) Internal Revenue Code. The term "Internal Revenue
26 Code" means the United States Internal Revenue Code of 1954

1 or any successor law or laws relating to federal income
2 taxes in effect for the taxable year.

3 (11.5) Investment partnership.

4 (A) The term "investment partnership" means any
5 entity that is treated as a partnership for federal
6 income tax purposes that meets the following
7 requirements:

8 (i) no less than 90% of the partnership's cost
9 of its total assets consists of qualifying
10 investment securities, deposits at banks or other
11 financial institutions, and office space and
12 equipment reasonably necessary to carry on its
13 activities as an investment partnership;

14 (ii) no less than 90% of its gross income
15 consists of interest, dividends, and gains from
16 the sale or exchange of qualifying investment
17 securities; and

18 (iii) the partnership is not a dealer in
19 qualifying investment securities.

20 (B) For purposes of this paragraph (11.5), the term
21 "qualifying investment securities" includes all of the
22 following:

23 (i) common stock, including preferred or debt
24 securities convertible into common stock, and
25 preferred stock;

26 (ii) bonds, debentures, and other debt

1 securities;

2 (iii) foreign and domestic currency deposits
3 secured by federal, state, or local governmental
4 agencies;

5 (iv) mortgage or asset-backed securities
6 secured by federal, state, or local governmental
7 agencies;

8 (v) repurchase agreements and loan
9 participations;

10 (vi) foreign currency exchange contracts and
11 forward and futures contracts on foreign
12 currencies;

13 (vii) stock and bond index securities and
14 futures contracts and other similar financial
15 securities and futures contracts on those
16 securities;

17 (viii) options for the purchase or sale of any
18 of the securities, currencies, contracts, or
19 financial instruments described in items (i) to
20 (vii), inclusive;

21 (ix) regulated futures contracts;

22 (x) commodities (not described in Section
23 1221(a)(1) of the Internal Revenue Code) or
24 futures, forwards, and options with respect to
25 such commodities, provided, however, that any item
26 of a physical commodity to which title is actually

1 acquired in the partnership's capacity as a dealer
2 in such commodity shall not be a qualifying
3 investment security;

4 (xi) derivatives; and

5 (xii) a partnership interest in another
6 partnership that is an investment partnership.

7 (12) Mathematical error. The term "mathematical error"
8 includes the following types of errors, omissions, or
9 defects in a return filed by a taxpayer which prevents
10 acceptance of the return as filed for processing:

11 (A) arithmetic errors or incorrect computations on
12 the return or supporting schedules;

13 (B) entries on the wrong lines;

14 (C) omission of required supporting forms or
15 schedules or the omission of the information in whole
16 or in part called for thereon; and

17 (D) an attempt to claim, exclude, deduct, or
18 improperly report, in a manner directly contrary to the
19 provisions of the Act and regulations thereunder any
20 item of income, exemption, deduction, or credit.

21 (13) Nonbusiness income. The term "nonbusiness income"
22 means all income other than business income or
23 compensation.

24 (14) Nonresident. The term "nonresident" means a
25 person who is not a resident.

26 (15) Paid, incurred and accrued. The terms "paid",

1 "incurred" and "accrued" shall be construed according to
2 the method of accounting upon the basis of which the
3 person's base income is computed under this Act.

4 (16) Partnership and partner. The term "partnership"
5 includes a syndicate, group, pool, joint venture or other
6 unincorporated organization, through or by means of which
7 any business, financial operation, or venture is carried
8 on, and which is not, within the meaning of this Act, a
9 trust or estate or a corporation; and the term "partner"
10 includes a member in such syndicate, group, pool, joint
11 venture or organization.

12 The term "partnership" includes any entity, including
13 a limited liability company formed under the Illinois
14 Limited Liability Company Act, classified as a partnership
15 for federal income tax purposes.

16 The term "partnership" does not include a syndicate,
17 group, pool, joint venture, or other unincorporated
18 organization established for the sole purpose of playing
19 the Illinois State Lottery.

20 (17) Part-year resident. The term "part-year resident"
21 means an individual who became a resident during the
22 taxable year or ceased to be a resident during the taxable
23 year. Under Section 1501(a)(20)(A)(i) residence commences
24 with presence in this State for other than a temporary or
25 transitory purpose and ceases with absence from this State
26 for other than a temporary or transitory purpose. Under

1 Section 1501(a)(20)(A)(ii) residence commences with the
2 establishment of domicile in this State and ceases with the
3 establishment of domicile in another State.

4 (18) Person. The term "person" shall be construed to
5 mean and include an individual, a trust, estate,
6 partnership, association, firm, company, corporation,
7 limited liability company, or fiduciary. For purposes of
8 Section 1301 and 1302 of this Act, a "person" means (i) an
9 individual, (ii) a corporation, (iii) an officer, agent, or
10 employee of a corporation, (iv) a member, agent or employee
11 of a partnership, or (v) a member, manager, employee,
12 officer, director, or agent of a limited liability company
13 who in such capacity commits an offense specified in
14 Section 1301 and 1302.

15 (18A) Records. The term "records" includes all data
16 maintained by the taxpayer, whether on paper, microfilm,
17 microfiche, or any type of machine-sensible data
18 compilation.

19 (19) Regulations. The term "regulations" includes
20 rules promulgated and forms prescribed by the Department.

21 (20) Resident. The term "resident" means:

22 (A) an individual (i) who is in this State for
23 other than a temporary or transitory purpose during the
24 taxable year; or (ii) who is domiciled in this State
25 but is absent from the State for a temporary or
26 transitory purpose during the taxable year;

1 (B) The estate of a decedent who at his or her
2 death was domiciled in this State;

3 (C) A trust created by a will of a decedent who at
4 his death was domiciled in this State; and

5 (D) An irrevocable trust, the grantor of which was
6 domiciled in this State at the time such trust became
7 irrevocable. For purpose of this subparagraph, a trust
8 shall be considered irrevocable to the extent that the
9 grantor is not treated as the owner thereof under
10 Sections 671 through 678 of the Internal Revenue Code.

11 (21) Sales. The term "sales" means all gross receipts
12 of the taxpayer not allocated under Sections 301, 302 and
13 303.

14 (22) State. The term "state" when applied to a
15 jurisdiction other than this State means any state of the
16 United States, the District of Columbia, the Commonwealth
17 of Puerto Rico, any Territory or Possession of the United
18 States, and any foreign country, or any political
19 subdivision of any of the foregoing. For purposes of the
20 foreign tax credit under Section 601, the term "state"
21 means any state of the United States, the District of
22 Columbia, the Commonwealth of Puerto Rico, and any
23 territory or possession of the United States, or any
24 political subdivision of any of the foregoing, effective
25 for tax years ending on or after December 31, 1989.

26 (23) Taxable year. The term "taxable year" means the

1 calendar year, or the fiscal year ending during such
2 calendar year, upon the basis of which the base income is
3 computed under this Act. "Taxable year" means, in the case
4 of a return made for a fractional part of a year under the
5 provisions of this Act, the period for which such return is
6 made.

7 (24) Taxpayer. The term "taxpayer" means any person
8 subject to the tax imposed by this Act.

9 (25) International banking facility. The term
10 international banking facility shall have the same meaning
11 as is set forth in the Illinois Banking Act or as is set
12 forth in the laws of the United States or regulations of
13 the Board of Governors of the Federal Reserve System.

14 (26) Income Tax Return Preparer.

15 (A) The term "income tax return preparer" means any
16 person who prepares for compensation, or who employs
17 one or more persons to prepare for compensation, any
18 return of tax imposed by this Act or any claim for
19 refund of tax imposed by this Act. The preparation of a
20 substantial portion of a return or claim for refund
21 shall be treated as the preparation of that return or
22 claim for refund.

23 (B) A person is not an income tax return preparer
24 if all he or she does is

25 (i) furnish typing, reproducing, or other
26 mechanical assistance;

1 (ii) prepare returns or claims for refunds for
2 the employer by whom he or she is regularly and
3 continuously employed;

4 (iii) prepare as a fiduciary returns or claims
5 for refunds for any person; or

6 (iv) prepare claims for refunds for a taxpayer
7 in response to any notice of deficiency issued to
8 that taxpayer or in response to any waiver of
9 restriction after the commencement of an audit of
10 that taxpayer or of another taxpayer if a
11 determination in the audit of the other taxpayer
12 directly or indirectly affects the tax liability
13 of the taxpayer whose claims he or she is
14 preparing.

15 (27) Unitary business group.

16 (A) The term "unitary business group" means a group
17 of persons related through common ownership whose
18 business activities are integrated with, dependent
19 upon and contribute to each other. The group will not
20 include those members whose business activity outside
21 the United States is 80% or more of any such member's
22 total business activity; for purposes of this
23 paragraph and clause (a)(3)(B)(ii) of Section 304,
24 business activity within the United States shall be
25 measured by means of the factors ordinarily applicable
26 under subsections (a), (b), (c), (d), or (h) of Section

1 304 except that, in the case of members ordinarily
2 required to apportion business income by means of the 3
3 factor formula of property, payroll and sales
4 specified in subsection (a) of Section 304, including
5 the formula as weighted in subsection (h) of Section
6 304, such members shall not use the sales factor in the
7 computation and the results of the property and payroll
8 factor computations of subsection (a) of Section 304
9 shall be divided by 2 (by one if either the property or
10 payroll factor has a denominator of zero). The
11 computation required by the preceding sentence shall,
12 in each case, involve the division of the member's
13 property, payroll, or revenue miles in the United
14 States, insurance premiums on property or risk in the
15 United States, or financial organization business
16 income from sources within the United States, as the
17 case may be, by the respective worldwide figures for
18 such items. Common ownership in the case of
19 corporations is the direct or indirect control or
20 ownership of more than 50% of the outstanding voting
21 stock of the persons carrying on unitary business
22 activity. Unitary business activity can ordinarily be
23 illustrated where the activities of the members are:
24 (1) in the same general line (such as manufacturing,
25 wholesaling, retailing of tangible personal property,
26 insurance, transportation or finance); or (2) are

1 steps in a vertically structured enterprise or process
2 (such as the steps involved in the production of
3 natural resources, which might include exploration,
4 mining, refining, and marketing); and, in either
5 instance, the members are functionally integrated
6 through the exercise of strong centralized management
7 (where, for example, authority over such matters as
8 purchasing, financing, tax compliance, product line,
9 personnel, marketing and capital investment is not
10 left to each member).

11 (B) In no event, shall any unitary business group
12 include members which are ordinarily required to
13 apportion business income under different subsections
14 of Section 304 except that for tax years ending on or
15 after December 31, 1987 this prohibition shall not
16 apply to a holding company that would otherwise be a
17 member of a unitary business group with taxpayers that
18 apportion business income under any of subsections
19 (b), (c), (c-1), or (d) of Section 304. If a unitary
20 business group would, but for the preceding sentence,
21 include members that are ordinarily required to
22 apportion business income under different subsections
23 of Section 304, then for each subsection of Section 304
24 for which there are two or more members, there shall be
25 a separate unitary business group composed of such
26 members. For purposes of the preceding two sentences, a

1 member is "ordinarily required to apportion business
2 income" under a particular subsection of Section 304 if
3 it would be required to use the apportionment method
4 prescribed by such subsection except for the fact that
5 it derives business income solely from Illinois. As
6 used in this paragraph, the phrase "United States"
7 means only the 50 states and the District of Columbia,
8 and but does not include any territory or possession of
9 the United States, but, for taxable years ending on or
10 after December 31, 2012, does include ~~or~~ any area over
11 which the United States has asserted jurisdiction or
12 claimed exclusive rights with respect to the
13 exploration for or exploitation of natural resources.

14 (C) Holding companies.

15 (i) For purposes of this subparagraph, a
16 "holding company" is a corporation (other than a
17 corporation that is a financial organization under
18 paragraph (8) of this subsection (a) of Section
19 1501 because it is a bank holding company under the
20 provisions of the Bank Holding Company Act of 1956
21 (12 U.S.C. 1841, et seq.) or because it is owned by
22 a bank or a bank holding company) that owns a
23 controlling interest in one or more other
24 taxpayers ("controlled taxpayers"); that, during
25 the period that includes the taxable year and the 2
26 immediately preceding taxable years or, if the

1 corporation was formed during the current or
2 immediately preceding taxable year, the taxable
3 years in which the corporation has been in
4 existence, derived substantially all its gross
5 income from dividends, interest, rents, royalties,
6 fees or other charges received from controlled
7 taxpayers for the provision of services, and gains
8 on the sale or other disposition of interests in
9 controlled taxpayers or in property leased or
10 licensed to controlled taxpayers or used by the
11 taxpayer in providing services to controlled
12 taxpayers; and that incurs no substantial expenses
13 other than expenses (including interest and other
14 costs of borrowing) incurred in connection with
15 the acquisition and holding of interests in
16 controlled taxpayers and in the provision of
17 services to controlled taxpayers or in the leasing
18 or licensing of property to controlled taxpayers.

19 (ii) The income of a holding company which is a
20 member of more than one unitary business group
21 shall be included in each unitary business group of
22 which it is a member on a pro rata basis, by
23 including in each unitary business group that
24 portion of the base income of the holding company
25 that bears the same proportion to the total base
26 income of the holding company as the gross receipts

1 of the unitary business group bears to the combined
2 gross receipts of all unitary business groups (in
3 both cases without regard to the holding company)
4 or on any other reasonable basis, consistently
5 applied.

6 (iii) A holding company shall apportion its
7 business income under the subsection of Section
8 304 used by the other members of its unitary
9 business group. The apportionment factors of a
10 holding company which would be a member of more
11 than one unitary business group shall be included
12 with the apportionment factors of each unitary
13 business group of which it is a member on a pro
14 rata basis using the same method used in clause
15 (ii).

16 (iv) The provisions of this subparagraph (C)
17 are intended to clarify existing law.

18 (D) If including the base income and factors of a
19 holding company in more than one unitary business group
20 under subparagraph (C) does not fairly reflect the
21 degree of integration between the holding company and
22 one or more of the unitary business groups, the
23 dependence of the holding company and one or more of
24 the unitary business groups upon each other, or the
25 contributions between the holding company and one or
26 more of the unitary business groups, the holding

1 company may petition the Director, under the
2 procedures provided under Section 304(f), for
3 permission to include all base income and factors of
4 the holding company only with members of a unitary
5 business group apportioning their business income
6 under one subsection of subsections (a), (b), (c), or
7 (d) of Section 304. If the petition is granted, the
8 holding company shall be included in a unitary business
9 group only with persons apportioning their business
10 income under the selected subsection of Section 304
11 until the Director grants a petition of the holding
12 company either to be included in more than one unitary
13 business group under subparagraph (C) or to include its
14 base income and factors only with members of a unitary
15 business group apportioning their business income
16 under a different subsection of Section 304.

17 (E) If the unitary business group members'
18 accounting periods differ, the common parent's
19 accounting period or, if there is no common parent, the
20 accounting period of the member that is expected to
21 have, on a recurring basis, the greatest Illinois
22 income tax liability must be used to determine whether
23 to use the apportionment method provided in subsection
24 (a) or subsection (h) of Section 304. The prohibition
25 against membership in a unitary business group for
26 taxpayers ordinarily required to apportion income

1 under different subsections of Section 304 does not
2 apply to taxpayers required to apportion income under
3 subsection (a) and subsection (h) of Section 304. The
4 provisions of this amendatory Act of 1998 apply to tax
5 years ending on or after December 31, 1998.

6 (28) Subchapter S corporation. The term "Subchapter S
7 corporation" means a corporation for which there is in
8 effect an election under Section 1362 of the Internal
9 Revenue Code, or for which there is a federal election to
10 opt out of the provisions of the Subchapter S Revision Act
11 of 1982 and have applied instead the prior federal
12 Subchapter S rules as in effect on July 1, 1982.

13 (30) Foreign person. The term "foreign person" means
14 any person who is a nonresident alien individual and any
15 nonindividual entity, regardless of where created or
16 organized, whose business activity outside the United
17 States is 80% or more of the entity's total business
18 activity.

19 (b) Other definitions.

20 (1) Words denoting number, gender, and so forth, when
21 used in this Act, where not otherwise distinctly expressed
22 or manifestly incompatible with the intent thereof:

23 (A) Words importing the singular include and apply
24 to several persons, parties or things;

25 (B) Words importing the plural include the

1 singular; and

2 (C) Words importing the masculine gender include
3 the feminine as well.

4 (2) "Company" or "association" as including successors
5 and assigns. The word "company" or "association", when used
6 in reference to a corporation, shall be deemed to embrace
7 the words "successors and assigns of such company or
8 association", and in like manner as if these last-named
9 words, or words of similar import, were expressed.

10 (3) Other terms. Any term used in any Section of this
11 Act with respect to the application of, or in connection
12 with, the provisions of any other Section of this Act shall
13 have the same meaning as in such other Section.

14 (Source: P.A. 96-641, eff. 8-24-09; 97-507, eff. 8-23-11;
15 97-636, eff. 6-1-12.)

16 Section 95. No acceleration or delay. Where this Act makes
17 changes in a statute that is represented in this Act by text
18 that is not yet or no longer in effect (for example, a Section
19 represented by multiple versions), the use of that text does
20 not accelerate or delay the taking effect of (i) the changes
21 made by this Act or (ii) provisions derived from any other
22 Public Act.

23 Section 99. Effective date. This Act takes effect upon
24 becoming law."